Supreme Court, U.S.
FILED
AUG 23 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-192

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1986

VICTOR TATE,

Petitioner,

v.

FISCHER STEEL CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

Frederick J. Lewis
GLANKLER, BROWN, GILLILAND,
CHASE, ROBINSON & RAINES
1700 One Commerce Square
Memphis, Tennessee 38103
(901) 525-1322

Attorneys for Respondent

QUESTIONS PRESENTED FOR REVIEW

1. In an action seeking to vacate an arbitration award, is an arbitrator's opinion and award that recites the evidence upon which the arbitrator's factual findings were based, a sufficient part of the record to preclude a district court from vacating the award based on new affidavits claiming that the arbitrator's factual findings were based on an inaccurate understanding of the evidence heard by the arbitrator?

2. In an action seeking to vacate an arbitration award, should post-hearing affidavits that set forth the recollection of persons who did not testify at the arbitration hearing of the proceedings and add their opinions on the ultimate issues before the arbitrator be relied upon to reject the arbitrator's

specific findings of fact based on testimony that the arbitration award recites that the arbitrator heard?

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Table of Authorities	iv
Statement of the Case	1
Argument: Reasons for Denying the Writ.	6
I. The Sixth Circuit's Holding is Consistent with the Decisions of that Court and with the Decisions of Other Circuits	6
II. Petitioner Does Not Present an Important, Unsettled Question . .	20
III. Petitioner's Analogy to Rule 10 of the Federal Rules of Appellate Procedure is Erroneous	25
Conclusion	28

TABLE OF AUTHORITIES

Cases	Page
American Postal Workers v. U. S. Postal Service, 682 F.2d 1280 (9th Cir. 1982), cert. denied, 103 S.Ct. 1183 (1982)	12
Bridgeport Rolling Mills Co. v. Brown, 314 F.2d 886 (2nd Cir. 1963), cert. denied, 375 U.S. 321.	20
Brotherhood of R.R. Trainmen v. Central of Georgia Ry. Co., 415 F.2d 403 (5th Cir. (1969).	17
City of Pakersburg W. Va. v. Turner Const. Co., 612 F.2d 144 (4th Cir. 1980).	17
Clinchfield Coal Co. v. District 28 United Miniworkers, 720 F.2d 221 1365 (4th Cir. 1983)	11
Exquisito Services, Inc. v. Restaurant Workers Local, 579 F.Supp 873, (S.D. Ohio 1984).	14
George Day Construction v. United Brotherhood of Carpenters, 722 F.2d 1471 (9th Cir. 1984).	12

TABLE OF AUTHORITIES (cont.)

	Page
Grahams Services, Inc. v. Teamsters Local 975, 700 F.2d 400 (8th Cir. 1982) . . .	27
National Post Office v. U.S. Postal Service, 751 F.2d 834 (6th Cir. 1985).	15
Orion Shipping and Trading Company v. Eastern States Petroleum Corp. of Panama, S.A., 312 F.2d 299 (2nd Cir. 1963), cert. denied, 373 U.S. 949 (1963)	13
Piggly Wiggly, Etc. v. Piggly Wiggly, Etc., 611 F.2d 580 (5th Cir. 1980).	11
Saxis S.S. Co. v. Multiface International Traders, Inc., 375 F.2d 577 (2nd Cir. 1967) .	13
Shearson-Hayden Stone, Inc. v. Liang, 653 F.2d 310 (7th Cir. 1981).	12
Sidarma Societa Italiana, Etc. v. Holt Marine, 515 F.Supp. 1302 (S.N. N.Y. 1981), aff'd, 681 F.2d 802 (2nd Cir. 1981) .	13
Storer Broadcasting v. American Federation of Tel., et al, 600 F.2d 45 (6th Cir. 1979).	22,23

TABLE OF AUTHORITIES (cont.)

	Page
Teamsters Local 957 v. R.W.F. Distributring, 574 F.Supp. 703 (S.D. Ohio 1983)	13
United Elec. Radio and Mach. Workers of America Local 1139 v. Litton Microwave Cooking Products, Litton Systems, Inc., 704 F.2d 393 (8th Cir. 1983) .	17
United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564, 80 S.Ct. 1343 (1960).	7,21
United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 8 S.Ct. 1358 (1960) 8,10,16,18,21,22	
United Steelworkers of America v. Timkin Co., 717 F.2d 1008 (6th Cir. 1983).	10
United Steelworkers of America v. Warrier and Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347 (1960).	21
Virgin Islands Nursing Assoc., Etc. v. Schneider, 668 F.2d 221 (3rd Cir. 1981).	11

TABLE OF AUTHORITIES (cont.)

	Page
Washington-Baltimore Newspaper Guild, Local 35 v. Washington Post Co., 442 F.2d 1234 (D.C. Cir. 1971)	13
Wisniewski v. United States, 353 U.S. 901 (1953).	17
Statutes	
9 U.S.C. § 10(c)	16
Other	
Federal Rule of Appellate Procedure Rule 10(c)	25,26
13 Moore's Federal Practice ¶ 817.21	16
Supreme Court Rule 17.1(a)	16,28

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

No. 86-192

Victor Tate,

Petitioner,

v.

Fischer Steel Corporation,[1/]

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This case concerns the attempt of the Petitioner to overturn the specific factual findings made by an Arbitrator in

---

1/ Respondent Fischer Steel Corporation is a wholly owned subsidiary of Fischer Lime and Cement Company. The only other company affiliated with Respondent is Fischer Lime and Cement Company (Arkansas).

a Labor Administration Award through the use of post-arbitration affidavits of persons present at the arbitration hearing but who did not testify before the arbitrator. The affidavits contested the factual conclusions drawn by the arbitrator and contradicted the statement in his Opinion and Award that, "Additionally, Company testimony at the hearing revealed that [Petitioner] would not have been the proper helper to have been recalled to work because there were three other helpers who were more senior than he was, and the recall would properly have gone to the most senior, available one of them." (Petitioner's Appendix 3, at 9-10).

Petitioner's grievance that led to the arbitration alleged that the Respondent Company had violated the

collective bargaining agreement by putting to work employees with less seniority than Petitioner while Petitioner continued to be on layoff. Pursuant to the collective bargaining agreement, the issue was submitted to arbitration. The collective bargaining agreement provides that arbitrator's awards are "final and binding".

The Arbitrator's Opinion and Award, dated October 6, 1983, not only stated that the Arbitrator had heard testimony that the Petitioner was not the most senior helper on layoff; it also stated as a "chief contention" of the Company the position that Petitioner was not the most senior helper on layoff as more senior helpers were also on layoff (Petitioner's Appendix 3, at 4-5).

On February 17, 1984, Petitioner brought an action in the United States District Court seeking to vacate or modify the arbitration award on the basis that while the opinion explicitly stated that the arbitrator had heard evidence that Petitioner was not the most senior helper on layoff, this conclusion was erroneous and there had been in fact no such evidence presented. Petitioner submitted two affidavits to this effect from two persons who did not testify at the arbitration hearing Respondent, relying on the language of the award and the finality of the Arbitrator's factual findings, filed no countervailing affidavits. On cross-motions for summary judgment, the District Court granted summary judgment to the Petitioner based on Petitioner's affidavits.

Respondent appealed to the Sixth Circuit Court of Appeals. The Court of Appeals reversed the District Court in an unpublished decision and reinstated the arbitration award. The Sixth Circuit, citing the decisions of this Court in the "Steelworkers Trilogy" for the well established principle that the scope of judicial review of arbitrator's award is very limited, determined:

> In this case, the existing record, which is the written opinion and award of the arbitrator, shows very clearly that there was a factual dispute whether Tate was the most senior laid-off helper; that company testimony was heard to the effect that he was not; and that such testimony was the basis for the arbitrator's finding that Tate was not the most senior laid-off employee in his job classification. Unlike Storer Broadcasting and Detroit Coil, the arbitrator in this case did not "dispense his own brand of industrial justice," but rather resolved a disputed issue of fact, stating, on the record,

> the evidentiary basis for his decision. (Petitioner's Appendix 1, at 12-13)

The Court further reasoned that the introduction of post-arbitration affidavits was an impermissible attempt to attack the arbitrator's factual findings with new evidence.

Petitioner subsequently filed with this Court a Petition for a Writ of Certiorari. Accordingly, Respondent files this Brief in Opposition to the Petition.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE SIXTH CIRCUIT'S HOLDING IS CONSISTENT WITH THE DECISIONS OF THIS COURT AND THE DECISIONS OF OTHER CIRCUITS.

Although the Petitioner admits that "[n]o reported case has been found which deals with the precise issues raised by this Petition," he asserts that "the Court of Appeals has decided an important, unsettled federal question in a way that conflicts with applicable decisions of this Court, the several circuit courts of appeals, and its own decisions." (Petitioner's Brief at 29). This is simply an inaccurate projection of the law. Petitioner's "conflicts" are at best illusory and the holding of the Sixth Circuit is in accord with the decisions of this Court and the other Circuit Courts of Appeals.

This Honorable Court, in the "United Steelworkers Trilogy", United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564, 80

S.Ct. 1343 (1960); United Steelworkers of America v. Warrior and Gulf Navigation Company, 363 U.S. 574, 80 S.Ct. 1347 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 80 S.Ct. 1358 (1960), set down guidelines for court review of arbitration decisions made under collective bargaining agreements. The three decisions mandated that arbitrator's opinions and awards are not to be vacated for mistakes of fact, nor are judges to substitute their judgment for that of the arbitrators. In its decisions, this Court held:

> Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator . . . . The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which

> will support the claim. 363 U.S. at 568. . . . The labor arbitrator performs functions which are not normal to the courts; the considerations which help them fashion judgments may indeed be foreign to the competence of courts. 363 U.S. at 581.
>
> The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The Federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. 363 U.S. at 596.
>
> A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. 363 U.S. at 598.

The rules of law enunciated in the Steelworkers Trilogy have been

consistently followed by the courts, as evidenced by several recent Courts of Appeals decisions.

The Sixth Circuit, citing United Steelworkers of America v. Enterprise Wheel and Car Corporation, has held that when an arbitrator resolves a grievance on its merits through intepretation of substantive provisions of a collective bargaining agreement the decision is within the peculiar province of the arbitrator and is to be enforced, regardless of whether the court might have interpreted the agreement differently, as long as the arbitrator's decision draws its essence from the collective bargaining agreement. United Steelworkers of America v. Timkin Co., 717 F.2d 1008, 1009 (6th Cir. 1983).

Citing the Steelworkers Trilogy, the Fourth Circuit iterated the Supreme Court's holding that in order to preserve arbitration under collective bargaining agreements, courts must refuse to review the merits of an arbitration award. Clinchfield Coal Co. v. District 28 United Mineworkers, 720 F.2d 1365, 1368 (4th Cir. 1983). See also Piggly Wiggly, Etc. v. Piggly Wiggly, Etc., 611 F.2d 580, 583 (5th Cir. 1980) (federal policy of settling labor disputes by arbitration would be undermined if courts have the final say on the merits of arbitration awards by determining whether there is support for the arbitrator's decision); Virgin Islands Nursing Associations, Etc. v. Schneider, 668 F.2d 221, 223 (3rd Cir. 1981) (court cannot set aside arbitrator's award because it disagrees

with the arbitrator on the merits unless the award is in manifest disregard of the law). If an arbitration award, on its face, represents a plausible interpretation of the collective bargaining agreement, the courts must enforce the award, regardless of whether the decision is ambiguous and notwithstanding the erroneousness of any factual findings or legal conclusions. George Day Construction v. United Brotherhood of Carpenters, 722 F.2d 1471, 1477 (9th Cir. 1984).

It is a well settled rule of law that arbitration awards may not be vacated for mistakes of fact. American Postal Workers v. U.S Postal Service, 682 F.2d 1280, 1284 (9th Cir. 1982), cert. denied, 103 S.Ct. 1183 (1982); Shearson-Hayden Stone, Inc. v. Liang, 653

F.2d 310, 312 (7th Cir. 1981); Washington-Baltimore Newpaper Guild, Local 35 v. Washington Post Co., 442 F.2d 1234, 1239 (D.C. Cir. 1971); Saxis S.S. Co. v. Multifacs International Traders, Inc., 375 F.2d 577, 581-582 (2d Cir. 1967); Orion Shipping and Trading Company v. Eastern States Petroleum-Corporation of Panama, S.A., 312 F.2d 299, 300 (2nd Cir. 1963), cert. denied, 373 US 949 (1963); Teamsters Local 957 v. R.W.F. Distributing, 574 F.Supp. 703, 706-707 (S.D. Ohio 1983); Sidarma Societa Italiana, Etc. v. Holt Marine, 515 F.Supp 1302, 1308 (S.D. N.Y. 1981), aff'd, 681 F.2d 802 (2nd Cir. 1981).

In support of his position, the Petitioner cites two district court opinions, Teamsters Local 957 v. R.W.F. Distributing, 574 F.Supp. 703 (S.D. Ohio

1983) and Exquisito Services, Inc. v. Restaurant Workers Local, 579 F.Supp. 873 (S.D. Ohio 1974), as being in conflict with the decision below. (Petitioner's Brief, at 29, 30). However, Petitioner admits that these cases are factually distinguishable and that the Sixth Circuit so held in its opinion below. (Petitioner's Brief, at 30; Petitioner's Appendix 2 (Appellate Court Opinion) at 14, 15). Yet, even if there were a true conflict between these district court decisions and the Sixth Circuit's holding below, it would hardly create a proper issue for Supreme Court review. To the extent that a previous district court decision within the circuit may have been inconsistent with the opinion below, it is effectively overruled sub. nom., thus eliminating any conflict.

Petitioner also cites the Sixth Circuit decision in National Post Office v. U.S. Postal Service, 751 F.2d 834 (6th Cir. 1985), as being in conflict with the opinion below. That case, however, is also easily distinghished. In National Post Office an arbitration award was sought to be vacated on the basis of alleged improprieties of the arbitrator during the arbitration hearing. These alleged improprieties would not necessarily be reflected in the arbitration record and, as such, the court held that it was proper to hold a thorough evidentiary hearing into these allegations. 751 F.2d at 840. National Post Office in no way, however, condones the use of post-arbitration affidavits to introduce new testimony to contradict a factual finding explicitly made by an

arbitrator. National Post Office is simply consistent with settled law that there is a "strictly confined" doctrine which allows the judiciary to vacate an arbitration award "[w]here an arbitrator is guilty of misconduct .. or of any other behavior by which the rights of any party are prejudiced...." 9 U.S.C. § 10(c). Cf., United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 599 (1960).

In any event, Supreme Court Rule 17.1(a), which Petitioner apparently attempts to invoke by showing a conflict among the federal courts, generally contemplates a conflict between decisions of two or more circuits, not conflicting decisions within a circuit. 13 Moore's Federal Practice ¶ 817.21. If Petitioner desired to attack the Sixth Circuit's

decision based on prior decisions by that court, he should have attempted to resolve the issue by petitioning the Court of Appeal for a rehearing en banc rather than "invoking so exceptional a jurisdiction of this Court as that on certification." Wisniewski v. United States, 353 U.S. 901, 902 (1953).

Petitioner also cites three cases from other circuits, United Elec. Radio and Mach. Workers of America, Local 1139 v. Litton Microwave Cooking Products, Litton Systems, Inc., 704 F.2d 393 (8th Cir. 1983); City of Parkersburg W.Va. v. Turner Const. Co., 612 F.2d 155 (4th Cir. 1980); and Brotherhood of R.R. Trainmen v. Central of Georgia Ry. Co., 415 F.2d 403 (5th Cir. 1969), in support of his claim that the action of the Sixth Circuit "departs from the whole tenor of

the decisions of this Honorable Court from the Steelworkers Trilogy forward, and those of the several circuit courts of appeal." (Petitioner's Brief, at 33). A fair reading of these decisions, however, reveals an obvious effort of the Petitioner to create a "false" conflict where none exists. These decisions simply recognize the established principle that an arbitrator's decision must reflect that the arbitrator manifested fidelity to his obligations under the collective bargaining agreement. Where the arbitration award refers to certain testimony heard by the arbitrator as the basis for the decision, a Court should not suffer an attack on the decision by affidavits contesting whether the testimony was heard or was accurate. The parties to the arbitration have bargained

for the arbitrator's factual findings, not those of a court taking new evidence following the award. See United Steelworkers of America v. Enterprise Wheel and Car Corp., supra.

As can be readily seen, Petitioner cites no authority establishing a "true" conflict among the circuits. He again admits that "[t]here is no specific circuit court of appeals decision addressing the issue precisely as it arises in the instant case" (Petitioner's, Brief at 33), yet asks "[D]oes this mean that petitioner must cite a case with the applicable principle and prevailing petitioner?" (Petitioner's Brief, at 31). The answer to this question must be a resonant "yes," for otherwise he has failed to demonstrate a conflict warranting the invocation of the

Court's exceptional jurisdiction. Petitioner is simply trying to create a "false" conflict to avoid the settled rule that arbitration decisions are not ordinarily examined de novo nor may they be vacated on the basis of new evidence. Bridgeport Rolling Mills Co. v. Brown, 314 F.2d 885 (2nd Cir. 1963), cert. denied, 375 U.S. 821.

II. PETITIONER DOES NOT PRESENT AN IMPORTANT, UNSETTLED FEDERAL QUESTION.

Petitioner asserts that the Court of Appeals decided an important, unsettled federal question when it decided "that no arbitration award can be subjected to judicial review in the Sixth Circuit unless there has been an officially reported and transcribed record." (Petitioner's Brief, at 26). Petitioner

misreads the Court of Appeals' Opinion. Nowhere in the Court of Appeals' Opinion is such a holding found nor can such a holding be implied.

As noted earlier, in the Steelworkers Trilogy this Court established guidelines for judicial review of arbitration decisions made pursuant to collective bargaining agreements. United Steelworkers of America v. American Manufacturing Company, 363 U.S. 564, 80 S.Ct. 1343 (1960); United Steelworkers of America v. Warrior and Gulf Navigation Company, 363 U.S. 574, 80 S.Ct. 1347 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. 593, 80 S.Ct., 1358 (1960). The Steelworkers Trilogy mandated that arbitrators' opinions and awards are not

to be vacated for mistakes of fact, nor is a judge to substitute his judgment for that of an arbitrator's. "The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards". United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. at 596. Accordingly, arbitration decisions on factual issues are conclusive and are not subject to review by district court judges who might interpret the evidence differently.

In Storer Broadcasting v. American Federation of Tel., et al, 600 F.2d 45, 47 (6th Cir. 1979) the Sixth Circuit Court of Appeals held that "if an examination of the record before the arbitrator revealed no support whatever for his determinations, his award must be

vacated". [emphasis supplied]. Storer Broadcasting does not alter the rule announced in the Steelworkers Trilogy. The Court of Appeals correctly distinguished its decision in Storer Broadcasting by observing that the arbitrator in Storer Broadcasting could not cite any factual support for his award. In the case at bar, however, the Court of Appeals found:

> The existing record, which is the written opinion and award of the arbitrator, shows very clearly that there was a factual dispute whether Tate was the most senior laid-off helper; that company testimony was heard to the affect that he was not; and that such testimony was heard to the effect that he was not; and that such testimony was the basis for the arbitrator's finding that Tate was not the most senior laid-off employee in his job classification. [emphasis supplied] Petitioner's Appendix 1, at 12-13.

Clearly the Arbitrator's Opinion and Award was itself a part of the "record" before the district court. And, in the case at bar, the Arbitrator's Opinion and Award recited the evidence, namely company testimony that Petitioner was not the most senior laid-off helper, which formed the basis for the Arbitrator's decision. Respondent was entitled to rely upon the Arbitrator's Opinion and Award as a part of the record supporting Respondent's Motion for Summary Judgment and countervailing Petitioner's Motion. The Opinion and Award rose to the level of a dispositive portion of the record because after the court examined the Opinion and Award and discovered there was evidence to support the Arbitrator's decision, there was no need for further examination of the record or affidavits.

"In light of the specific factual finding of the arbitrator, which is contained in the record, it would have been improper for the District Court to weigh anew the matters presented in affidavits..." (Petitioner's Appendix 1, at 16).

Since the record reveals evidence supporting the Arbitrator's decision on a factual issue it may not properly be overturned by a district court. The action of the Sixth Circuit herein is entirely consistent with the Steelworkers Trilogy and Storer Broadcasting.

III. PETITIONER'S ANALOGY TO RULE 10 OF THE FEDERAL RULES OF APPELLATE PROCEDURE IS ERRONEOUS.

Petitioner also relies on Rule 10(c) of the Federal Rules of Appellate Procedure, which governs preparation of the record for appeal if no transcript is

available, as being "analogous to what was done in the case at bar." (Petitioner's Brief, at 28). Although Rule 10(c) does allow an Appellant to "prepare a statement of the evidence or evidence from the best means available, including [his] the appellant's recollection," Petitioner has cited no authority that supports application of this Rule to the review of an arbitration award. Moreover, Petitioner did not follow the procedures of Rule 10(c) in the case at bar. The Rule provides that the proposed statement of evidence "shall be served on the Appellee, who may serve objections or proposed amendments thereto within ten (10) days after service. Thereupon the statement and any objections or proposed amendment shall be submitted to the district court for

settlement and approval and as settled and approved shall be included by the clerk of the district court in the record on appeal." Even if Rule 10(c) were applicable to the case at bar, the Petitioner has failed to abide by its dictates.

It is well settled that arbitrators are not bound by formal rules of procedure evidence, and the standard for judicial review of arbitration procedures is merely whether a party to arbitration has been denied a fundamentally fair hearing. National Post Office, 751 F.2d at 841; Graham Service, Inc. v. Teamsters Local 975, 700 F.2d 420, 422 (8th Cir. 1982). To allow the losing party in arbitration to subsequently attack the arbitration award on the basis of affidavits from persons who did not

testify at the arbitration hearing, that when these affidavits add their own opinions on the ultimate issues before the arbitrator, would defeat the entire purpose of arbitration - i.e., to allow the parties to resolve their differences in a speedy, economical manner.

CONCLUSION

It is respectfully submitted that Petitioner has wholly failed to sustain his burden of establishing under Rule 17 that there are "special and important reasons" why the writ should be granted. The unpublished decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Court of Appeals decided a federal question in a way to conflict with applicable decisions of this Court or of another

Court of Appeals on the same matter. The Court of Appeals correctly decided that the decision of the arbitrator may not be judicially impeached by post-arbitration affidavits.

Respectfully submitted,

Frederick J. Lewis
GLANKLER, BROWN, GILLILAND,
CHASE, ROBINSON & RAINES
1700 COMMERCE SQUARE
MEMPHIS, TENNESSEE 38103
(901) 525-1322

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been served by forst class United States mail pursuant to Supreme Court Rule 28.3 this 22nd day of August, 1986, upon C Michael Robbins, 405 Two Mile Pike, Goodlettsville, TN 37072 and David S. Stocton, P.O. Box 1246, 161 S. Tipton, Munford, TN 38058.